

1 A. Okay.

2 Q. Did you receive this letter from
3 Denise Phillips?

4 A. Yes.

5 Q. This is a letter from USBI?

6 A. Correct.

7 Q. I guess also known as Billing
8 Concepts?

9 A. Billing Concepts, I believe, is the
10 parent company.

11 Q. What is it that Denise is telling you?

12 A. What she's telling us is that she's
13 not going to bill our customers in Vermont.

14 Q. And that is because?

15 A. Because we have complaints there.
16 They were contacted by the PUC or PSC in Vermont.
17 And they decided that they would not bill any
18 more customers until they had planned for us to
19 resolve any issues that we had with the state
20 Government.

21 Q. The next document I want to show you

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1 is Bate Stamp 08073. The "Hi, Andrea" note is
2 something that you did?

3 A. Yes.

4 Q. What is it that you're telling Andrea?

5 A. Just telling her that we have a plan
6 to resolve any problems that we have in the State
7 of Vermont so we can continue billing.

8 Q. And if I remember from an earlier
9 e-mail, Andrea is not from the State of Vermont,
10 she's from the Billing Concepts or USBI?

11 A. Correct. She's our representative
12 there.

13 Q. The date -- there's a note here from
14 Andrea. And that's dated May 15. There no
15 indication that I can see in terms of when your
16 note to Andrea is. But I would assume it's
17 around that period of time.

18 A. Probably the same day or the next day.

19 Q. The next document I want to show you
20 is Bate Stamp 08072. Who is Ben Truman
21 (phonetic)?

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1 A. Ben Truman is a representative of the
2 Vermont Government. He is the gentleman who I
3 dealt with before that I spoke to.

4 Q. So before Sarah Hoffman?

5 A. Yes.

6 Q. Okay.

7 A. I'm sure it was.

8 Q. The next document I want do show you
9 is Bate Stamp 08071. And it reflects dates of
10 May 22 and May 23, 2002. This exchange of
11 e-mails between Amy and Ben, would I be correct
12 that what this is about is the reprovisioning
13 aspect of Business Options' practices?

14 A. That's what I would assume, yes.

15 Q. And is it your understanding from this
16 e-mail that -- this exchange of e-mails that the
17 opinion of the State of Vermont representative is
18 that reprovisioning practice is inappropriate?

19 A. Yes.

20 Q. Did you bring this information that
21 appears in these two e-mails to the attention of

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1 Kurtis or Keanan?

2 A. No. I have not seen this before.

3 Q. You've not seen this?

4 A. Not that I recall.

5 Q. But Amy was your assistant at the
6 time?

7 A. Yes. She basically handled all the
8 complaints. And if something were to get more
9 serious, then she would bring it to me. She
10 would do most of the front-line work on the
11 complaints.

12 Q. Would it have been in the ordinary
13 course that if a state representative told Amy
14 that the company practice was inappropriate that
15 she would have brought that to your attention?

16 A. Yes.

17 Q. So did there come a time then when you
18 became aware that the view of the State of
19 Vermont was that the reprovisioning practice that
20 BOI had used with respect to Vermont customers
21 was inappropriate?

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1 A. Yes.

2 Q. And did you bring that information to
3 the attention of anybody else?

4 A. I'm sure I discussed it with Kurtis.

5 Q. You don't have any independent
6 recollection of doing so though?

7 A. No.

8 Q. The next document I want to show you
9 is two pages. It's Bate Stamp 08096 and 08097.
10 It's a letter that -- I'm a little confused here
11 because on the first page, it reflects a date of
12 July 18. And the second page, it reflects a date
13 of July 15, 2002. Do you remember receiving this
14 letter from the State of Vermont?

15 A. Yes.

16 Q. What was you're understanding as to
17 why this letter was sent to you?

18 A. They were not happy with our responses
19 to their interrogatories. So they made a
20 decision based on that, that they were going to
21 ask us to withdraw from the state.

1 Q. Do you know whether you brought this
2 letter to the attention of either Kurtis or
3 Keanan?

4 A. I don't remember specifically, but
5 that would have been the normal action.

6 Q. In the normal course of business, you
7 would have brought a matter such as this to the
8 attention of Kurtis or Keanan?

9 A. Yes.

10 Q. The next document is Bate Stamp 08105.
11 It's a letter dated July 23, 2002. Did you
12 receive this letter?

13 A. Yes.

14 Q. And what is this letter telling you?

15 A. It's a response. They had asked --
16 when we initially had the complaints there, there
17 were some problems with their tariff. They asked
18 that we reissue the tariff and make some changes.
19 I did so. The changes were not exactly what they
20 were looking for. They sent me that letter.

21 Q. Whatever it was that you sent to the

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1 State of Vermont was then rejected?

2 A. Yes.

3 Q. And what, if anything, did you do as
4 result of this letter?

5 A. I believe I issued it twice. And
6 twice, they -- there was something wrong. Not
7 necessarily with the what was actually in the
8 pages that I had submitted, it was the from in
9 which I submitted it. Something like that was
10 wrong. And after the second time, we had already
11 gotten to the point where we were -- a legal
12 action was taking place. And they were telling
13 us to withdraw from the state. So we
14 discontinued trying to reach them.

15 Q. The next document I'm going to hand
16 you is a letter and then a set of information
17 requests that follow that appear to be related to
18 it. It's Bate Stamp 08113 through 08121. This
19 letter and the attachment -- the first set of
20 information requests, et cetera, you received?

21 A. Correct.

1 Q. And what did you do as a result of
2 receiving them?

3 A. I issued the information that was
4 requested back to the state.

5 Q. In other words, you tried to respond
6 to their set of information requests?

7 A. Correct.

8 Q. Did anybody review what it was that
9 you sent in response to the State of Vermont's
10 information request?

11 A. I don't believe so.

12 Q. Would it have been in the normal
13 course of your job to respond without review to
14 such a set of requests?

15 A. Dependent upon what the information
16 they were requesting, it would have been.
17 Typically, I would write a letter. Then let
18 Kurtis review it. And then send it off. And I
19 don't specifically remember doing so. I remember
20 generating the information. I'm not sure if I
21 passed it by Kurtis or not.

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1 Q. The next document I'm going to show
2 you is dated August 26, 2002. The Bate Stamp is
3 08122. Did you receive this letter?

4 A. Yes.

5 Q. What's going on here?

6 A. We got to the deadline of their
7 information request. And I was going out of the
8 office for a few days, so I requested an
9 extension.

10 Q. So this is a request -- concerning the
11 request for an extension to respond to whatever
12 questions it was that the State of Vermont had
13 sent you?

14 A. Correct.

15 Q. And it makes reference here to medical
16 tests. What's that all about?

17 A. I was going in for some testing. And
18 I was going to miss a few days of work, which was
19 right at the point where we had to have the
20 information submitted.

21 Q. The next document I'm going to show

1 you is Bate Stamp 08123 through 08129.

2 A. Okay.

3 Q. Have you seen this document before?

4 A. Yes.

5 Q. And you see the title of it,

6 "Preliminary Injunction." What, if any,

7 understanding did you have as to what this

8 document is supposed to be doing?

9 A. Eliminating our license or agreement
10 to sell or bill in the State of Vermont.

11 Q. On the very first page at the bottom,
12 there's a footnote that asserts that BOI did not
13 attend the hearing and did file a notice of
14 appearance as of the date that is noted. Is that
15 assertion accurate so far as you know?

16 A. Yes. I had made some agreements with
17 the representatives of the Public Service Board
18 there. And the agreement was that we would work
19 through it. And everything would be done on a
20 voluntary basis. Including our withdrawal if
21 they saw that as necessary. They went ahead and

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1 kind of went legal on us. And it was not
2 something we were anticipating because we were
3 going along basically doing everything they asked
4 us to do.

5 And there was really -- they called
6 and said, "We're going to have a hearing." And
7 there was no way for me to go to it. My
8 assumption was that we were withdrawing from the
9 state anyway. So I knew what their finding was
10 going to be, so I said to go ahead and have it.
11 So they probably told me there wasn't going to be
12 a hearing, but there was, you know, no purpose in
13 my mind to go. And I know I discussed that with
14 Kurtis.

15 Q. You weren't excited about flying to
16 Vermont?

17 A. No. Vermont sounds probably as good
18 as Mississippi, but I just wasn't anxious to go
19 to that one.

20 Q. Your recollection is, that the
21 possibility of attending the hearing was brought

1 to Kurtis's attention?

2 A. I told him that there was going to be
3 a hearing. And he said, "Do you want to go?"
4 And I said, "No." And he said, "What's going to
5 happen?" And I said, "They're going to
6 probably -- we're going to get an injunction and
7 they're going to tell us not to sell or bill."
8 And he said, "Are we selling and billing now?"
9 And I said, "No."

10 Q. So he said, "Fine. Don't go"?

11 A. Absolutely.

12 Q. I'm going to show you Bate Stamp
13 Numbers 08135 through 08142.

14 A. Okay.

15 Q. The letter and the -- the two-page
16 letter and then the final stipulation, these were
17 materials that were sent to you?

18 A. Yes.

19 Q. With respect to the final stipulation,
20 was that a matter that -- was that a document
21 that you showed anybody?

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1 A. I issued a copy of it to Kurtis and to
2 Keanan.

3 Q. And that was to let them know that
4 there was some agreement in place regarding the
5 withdrawal of Business Options in Vermont?

6 A. Yes. I had to request money to do the
7 refunds that are mentioned in the final
8 stipulation. So I had to inform Kurtis of why I
9 would make that kind of request. The sum was
10 \$15,000, I think, and some change. And in order
11 to get that type of request through for that kind
12 of money, I had to provide some kind of proof
13 that it was a legitimate request from a state.

14 Q. And the proof would have been that
15 final stipulation?

16 A. Yes.

17 Q. Would it be the case that as of
18 November 26th, 2002, you were no longer
19 physically at the 8380 Louisiana Street location?

20 A. Correct.

21 Q. You had stopped work there about a

1 month before?

2 A. My last day, I believe, was November
3 1.

4 Q. In terms of general office practices
5 while you were at Business Options, Buzz Telecom,
6 et cetera, if a fax had been addressed to Kurtis
7 Kintzel, where would that fax have gone?

8 A. To Kurtis Kintzel.

9 Q. Would it go to, say, his secretary in
10 the first instance who might have blocked it and
11 then it off someplace else?

12 A. Anytime when Kurtis had an assistant,
13 that assistant would filter anything that was
14 going to him. So it's very possible the fax that
15 was addressed to him would go to her. And she
16 would go through it and say, "This is important.
17 This is not." Kurtis would only look at the
18 important stuff.

19 Q. So with respect to any fax that was
20 sent to Kurtis, it is conceivable that whoever
21 his secretary was could have blocked it and not

1 shown it to him?

2 A. Certainly.

3 Q. But in the ordinary course, if it were
4 important -- let's say it came from a state PUC,
5 anything from a state PUC.

6 A. If it came from a state PUC and I was
7 there, it would have been directed to me
8 typically. No matter who it was addressed to.
9 Also dependent on who pulled it off the fax. At
10 times when Kurtis had an administrative
11 assistant, that person would not only empty his
12 specific fax machine at his office, but also go
13 to his mailbox and empty it. And he would sort
14 through everything in there before he would see
15 anything. And it would be up to that person's
16 judgment. Not only if Kurtis see something, but
17 if it needed to be routed to someone else like me
18 or Keanan or whomever.

19 (Discussion held off the record.)

20 Q. What I'm showing you next, Mr.
21 Brzycki, is a document dated November 1, 2002.

1 And it is from the Federal Communications
2 Commission. The letter itself, I believe, is six
3 pages in length. And there's a two-page
4 attachment that follows. The first question I
5 have is, have you ever seen this document before?

6 A. No.

7 Q. Were you aware of its existence prior
8 to today?

9 A. No.

10 Q. Do you have any knowledge as to
11 whether or not the legal department at Business
12 Options responded to this letter?

13 A. No.

14 Q. In your tenure as the head of
15 corporate affairs at Business Options, did you
16 ever receive a letter like this from the Federal
17 Communications Commission?

18 A. Not from the Federal Communications
19 Commission, no.

20 Q. We've gone over some other documents
21 that are similar to this from various states,

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1 but --

2 A. Yes. Never from the Federal
3 Government.

4 Q. Just holding onto the November 1
5 letter for a minute, I'm going to show you
6 another document that's from Business Options
7 dated December 9, 2002. Just glance through
8 that.

9 (Witness Reviewing Document.)

10 Q. Have you ever seen the response that
11 Business Options sent to the Federal
12 Communications Commissions before?

13 A. No.

14 Q. Were you aware that such a response
15 had been prepared?

16 A. No.

17 Q. Keep them both in front of you. I
18 want you to take a look at the questions and then
19 Business Options' answers. Given what you know
20 having worked at corporate affairs in Business
21 Options, was question one responded to fully and

1 accurately by Business Options?

2 A. No.

3 Q. What is it that you see that leads you
4 to that opinion?

5 A. A description of each subsidiary or
6 affiliate identified. I don't see anything
7 identified. A list of officers and directors for
8 each affiliate entity, I don't see any of that.
9 Provide all relevant documents. And I think I
10 saw one, just the State of Illinois. That's it.
11 There seems to be a lot missing.

12 Q. If you could, please do the same with
13 respect to question two.

14 A. I don't know what the registration
15 requirements are, but I don't know why the
16 certificate of authority from Illinois would be
17 included in a Federal request.

18 Q. Moving on to question three. And I
19 recognize question three has a number of
20 subparts. So why don't you take all the time you
21 need before trying to respond.

1 (Witness Reviewing Document.)

2 Q. And also to assist your understanding
3 with respect to question three, it refers to the
4 complaints, the list of complaints that are
5 attached to the letter.

6 A. From the State of Maine?

7 Q. Right.

8 A. They basically didn't answer the
9 question at all, number three.

10 Q. What makes you say that?

11 A. They don't answer anything that's
12 requested. They're basically saying they did
13 none of this. And they should have been
14 addressing each paragraph independently. Dealing
15 with it in a much more expanded way.

16 Q. Does that mean that to your
17 knowledge -- and that, I'm sure has been
18 bolstered apart by all the documents that we
19 looked at earlier today. That there were some
20 switches of some kind that took place post April
21 1, 2002 with respect to customers that are noted

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1 on the attachment.

2 A. Yes. Just from my knowledge of the
3 company, but also, we know that some people were
4 reprovisioned or whatever the proper term is.
5 That should have been listed. And those
6 complaints were in the office.

7 Q. How is it that somebody in Shannon's
8 position could have come across the information
9 necessary to answer question three?

10 A. It's very possible she did not
11 understand what was there. But every piece of
12 documentation that I just wrote that we went
13 through, she had a copy of.

14 Q. In other words, the nine directives
15 that have become exhibits, you had left with her?

16 A. Correct.

17 Q. Did you talk about them with her other
18 to say, "Here they are"?

19 A. I think I just gave them to her and
20 told her to call me if she had any questions.

21 Q. Good luck, amiga?

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1 A. Exactly.

2 Q. Okay.

3 A. I don't think that she comes from a
4 telecommunications background. So it's possible
5 that she just had no idea. I think she comes
6 from a military background. But obviously, they
7 did not respond the way I would have responded if
8 I'd have been there.

9 Q. How about question four?

10 A. Again, there's more information that
11 they should have included. They did, at least,
12 provide some of that documentation. But there
13 are three scripts minimum that have been used.
14 And also scripts for the previous company. So
15 you should have at least got a set of Buzz
16 scripts and a set of U.S. Bell or Business
17 Options' scripts.

18 Q. How about question five?

19 A. Obviously, they're giving you almost
20 no information that's requested. They're just
21 giving you a very basic description.

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1 Q. Question six.

2 A. Again, it's the same thing. They're
3 not really treating this with the seriousness
4 that it should have been treated with. And it
5 looks like they just didn't know what to do.
6 They went to somebody that's not in legal to ask
7 for help and someone who really doesn't know.

8 Q. Are you now referring to the answers
9 that were provided with respect to seven through
10 eleven?

11 A. Yes.

12 Q. Specifically, with respect to question
13 seven, take a look at the question and take a
14 look at the answer provided. And the basic
15 outstanding question is whether the information
16 provided in response to the FCC's question was
17 complete and accurate.

18 A. No. Certainly not complete, but we
19 had misrepresentation complaints.

20 Q. Such as we had talked about with
21 respect to that person Albert, who is a sales

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1 manager. That had taken place post April 1,
2 2002?

3 A. That would be a subject I'd have to go
4 back and look even in the case of these Maine
5 complaints. At the very minimum over a normal
6 course of business, you get a misrepresentation
7 complaint one or two a week without question. No
8 matter what, people think -- when you call, some
9 think you're from AT&T or what have you. Even if
10 they say, "Are you from AT&T?" And you say, "No.
11 I'm not from AT&T." They hear you say "AT&T."
12 And if they complain about the sale, that's
13 misrepresentation.

14 Q. Or at least it could be found to have
15 been such?

16 A. Right. That would be the way we would
17 define it if that's the occurrence.

18 Q. Moving on to question eight.

19 A. It may be accurate that he didn't find
20 any examples. It's kind of a general answer in
21 "We do have our ears up in monitoring and anyone

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1 on the sales floor for anyone who says AT&T,
2 Sprint, any name that's recognizable." It's
3 possible that there are no cited examples of
4 that. My experience is that you get someone on
5 the floor typically at least once a month who
6 thinks that they can get away with that. That's
7 the kind of people that you hire and fire in that
8 industry.

9 Q. In order to properly answer question
10 eight, what kind of research would have been
11 involved?

12 A. He would have to go in and look at
13 complaints and see if there was anything there.
14 And also review employee files to see if anyone
15 was fired for misrepresentation. And with every
16 person who is dismissed from the company, a
17 little form is made out, it's called a routing
18 out form. And a reason is given why they're
19 being routed out. Whether it's this person
20 decided to quit; this person walked off the job;
21 this person said he was from AT&T; this person

1 slapped somebody. Whatever the reason that is on
2 there, he would need to review those. Usually,
3 those stick out in your memory. Something like a
4 misrepresentation or a fight or something like
5 that because they don't happen that often.

6 Q. Given that the letter is inquiring
7 about activity or instances that occurred after
8 April 1, and it's my recollection from your
9 testimony and that of Mr. Chill that he came on
10 the scene sometime after April 1. What could he
11 have done to have learned what, if anything, had
12 transpired prior to his coming on board going
13 back to April 1?

14 A. He would have had to physically go
15 through the employee files and physically go
16 through the complaint files to find that
17 information predating himself.

18 Q. Moving on to question nine.

19 A. Again, it's the same situation where
20 he would have to go back and look through the
21 documents to find it. Unless he had specifically